IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 21166 of 1996

Between:

J. Nirmala Kumari, W/o. Ashok Kumar,
LIC of India, R/.o. H.No. 3-14-539, Subash Nagar,
Hanamkonda, Warangal District.

..... PETITIONER

AND

1 The Zonal Manager, South Central Zonal Office,

Life Insurance Corporation of India,
Saifabad, Hyderabad - 500 463.
2 The Divisional Manager, Divisional Office,

Life Insurance Corporation of India, H.No. 1-5-123 to 132,
Kaman Road, Karimnagar,
Karimnagar District - 505 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly one in the nature of Writ of Certiorari, calling for the records relating to the order dt.6.9.96 passed by the 1st respondent in confirming the order dt. 30.1.96 passed by the 2nd respondent and quash the same as illegal, arbitrary and consequently direct the respondents to treat the suspension period from 18.9.92 to 24.5.94 as on duty and pay all consequential benefits such as payment of arrears of salary, increments to the petitioner, and pass

Counsel for the Petitioner: Mr. A.PRABHAKAR RAO

Counsel for the Respondents: Mr. D.V.SITARAMAMURTHY

The Court made the following :

O R D E R:

This Writ Petition is filed seeking to quash the Order dated 6-9-1996 passed by the 1st respondent confirming the order dated 30-1-1996 passed by the 2nd respondent as arbitrary and illegal and consequently to direct the respondents to treat the suspension period of the petitioner from 18-9-1992 to 24-5-1994 as on duty and pay all consequential benefits, such as, arrears of salary, increments etc.

It is the case of the petitioner that she joined as an Assistant in the respondent-Life Insurance Corporation of India. Later, she was appointed as Stenographer in the year 1987 and posted at Divisional Office, Warangal. Subsequently, she was also promoted as Higher Grade Assistant with effect from 1-8-1992 and was transferred to Huzurabad Branch. During her tenure at Huzurabad Branch, she was arrested by the police in connection with a crime registered under Section 302 of the Indian Penal Code and remanded to judicial custody. Therefore, the Senior Divisional Manager placed her under suspension with effect from 18-9-1992. However, later, on 16-5-1994 the order of suspension was revoked. Therefore, she joined duty immediately. The criminal case in S.C.No.202 of 1993 on the file of the learned Additional Sessions Judge, Warangal in which she was falsely implicated, ended in acquittal. The further appeal carried by the State before this Court in Crl.A.No.14 of 1996 was also dismissed confirming the order of acquittal recorded by the learned Additional Sessions Judge, Warangal. Her service in the cadre of Higher Grade Assistant was confirmed after completion of one year probation period with effect from 1-8-1993 by the 2nd respondent vide Proceedings dated 28-11-1995.

Thereafter, she filed an application for fixation of pay on promotion as Higher Grade Assistant. Respondent No.2 herein by an Order dated 30-1-1996 fixed her pay notionally as Rs.1710/- and further it was decided that she is not entitled for the subsistence allowance and the period of suspension from 18-9-1992 to 18-10-1992 was treated as privilege leave and the period from 19-10-1992 to 24-5-1994 was treated as '*dies non*'. Aggrieved by the same, the petitioner filed further appeal and the same was confirmed by the 1st respondent by his order dated 6-9-1996. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is stated that the representation of the petitioner dated 27-7-1995 requesting to confirm her services, pay subsistence allowance and fix the basic pay in the cadre of Higher Grade Assistant with effect from 1-8-1993 was considered and her pay was fixed at Rs.1710/- as per Rules with effect from 1-9-1992 and difference of arrears arising out of fixation in payment of subsistence allowance and salary were also paid. Computer increment was also sanctioned and her pay was fixed notionally at Rs.1810/- with effect from 1-11-1993. Subsistence allowance at the rate of 50% of basic pay from the date of suspension was paid during the period of suspension i.e. from 18-9-1992 to 24-5-1994. The petitioner is not entitled for full salary treating the entire period of suspension as the period spent on duty. The authorities concerned have considered the representation of the petitioner from all aspects and issued the Proceedings, which are impugned in this Writ Petition.

Learned counsel for the petitioner states that treating the period during which the petitioner was out of employment from 19-10-1992 to 24-5-1994 as 'dies non' is arbitrary and illegal and it amounts to double punishment.

Per contra, learned counsel appearing for the respondents states that in view of Regulation 38 of the Life Insurance Corporation of India (Staff) Regulations,1990 (for short 'the Regulations), the authorities have taken a right decision and neither the same is arbitrary nor illegal and does not call for interference at the hands of this Court.

I have given my earnest consideration for the respective submissions made by both the learned counsel and gone through the impugned Proceedings and other material made available on record.

In view of the above factual position, the only question that falls for consideration is whether the service of the petitioner from 19-10-1992 to 24-5-1994 could have been treated as a 'dies non', which means the service during that period will not be counted for any purpose, either for promotion or for granting annual increments etc.

There is no dispute as to the payment of subsistence allowance, sanctioning of privilege leave and granting of notional increments during the period the petitioner was under suspension. Regulation 38 of the Regulations, which deals with the situation arising out of the above facts, reads as under:

> "**Treatment of the period of suspension:**
>
> **38.** When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed or suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be, whose decision shall be final under these regulations, may grant to him for the period of his absence from duty-
>
> a. if he is honourably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance.
>
> b. If otherwise, such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.
>
> In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b), the period of absence shall not be treated as a period spent on duty, but the disciplinary, appellate or the reviewing authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules; any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these Regulations but will not constitute break in service.
>
> No order passed under this regulation shall have the effect of compelling any employee to refund the subsistence allowance payable under Regulation 37."

Regulation 38(a) contemplates that if an employee is honourably acquitted, the full pay and allowances which he/she would have been entitled to had he/she not been dismissed, removed or suspended, less the subsistence allowance. Further, the

proviso contemplates that in a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. However, the disciplinary authority, appellate authority or reviewing authority may at its discretion grant leave for the period to the extent admissible to the employee under the Rules. Any period of absence, which has not been treated as a period spent on duty or on leave shall not count as service for any purpose under these Regulations, but will not constitute a break in service.

In the instant case, for the period from 18-9-1992 to 18-10-1992 the petitioner was granted privilege leave, whereas for the period from 19-10-1992 to 24-5-1994 the same was treated as a *'dies non',* which is not permissible under the law. That may be applicable for the cases where a person is not involved in a criminal case. The case on hand squarely falls into clause (a) of Regulation 38. Therefore, the period of absence from duty will have to be treated as period spent on duty and the petitioner is entitled for all benefits arising out of the said treatment. However, learned counsel for the respondents stated that such a course is applicable only in a case of honourable acquittal and in this case, the petitioner was acquitted by extending the benefit of doubt. In this regard, I have perused a copy of the Judgment of the learned Additional Sessions Judge, Warangal in S.C.No.202 of 1993, dated 13-4-1995 in which it was observed as under:

> "……Consequently, the nature of death of the deceased as to homicidal or suicidal or accidental remains suspicious on record in view of the opinion of P.W.8, Ex.D1 and the principles of forensic medicine as there is variance and no consistency in all three oral dying declarations about the involvement of the accused; and further Ex.P15 dying declaration recorded by the Magistrate is supposed to have been obtained on tutoring and prompting by the parents of the deceased and suffers from other infirmities. They are not worth of acceptance as they defer from the case of prosecution and as such, cannot form basis for conviction of the accused. Further it is found that there is no truth in the contention of the scene of offence panchanama, as P.W.1 is not present at the time of its preparation and lastly the complaint lodged by P.W.1 is belated one and prepared after due deliberations so as to give colour version to involve both these accused.
>
> **45.** In view of the aforesaid finding, I am of the opinion that the prosecution failed to bring home the guilt of both the accused for an offence punishable U/Sec.302 IPC beyond all reasonable doubt. Therefore, they cannot be found guilty for the charge U/Sec.302 IPC. Accordingly, they are acquitted for the said charge as per Sec.235(1) Cr.P.C……"

From the above, it is clear that the petitioner was honourably acquitted of the charges. Once this is so, the period for which the petitioner was put out of service should be treated as continuity of service. Therefore, treating the period of absence of the petitioner as *dies non* is not correct. The petitioner is entitled for continuity of service, as if she was on duty for the entire period. Further, the discretion is always vested with the disciplinary authority, appellate authority or reviewing authority, as the case may be, in regulating the absence of the petitioner from duty. In such cases only when the suspension of the employee is held to be unjustified or not wholly justified, the employee is entitled for full pay and allowances and not otherwise. In this case, it cannot be said that suspension of the petitioner was not justified. There is no fault on the part of the respondents in placing the petitioner under suspension in view of her arrest and alleged involvement in a criminal case punishable under Section 302 IPC, which, of course, ended in honourable acquittal. Therefore, the impugned order passed by the 2nd respondent as confirmed by the 1st respondent to the extent of treating the period from 19-10-1992 to 24-5-1994 as *dies non* is not proper and such a power or discretion is not vested in the authorities under the Service Regulations. Hence, the impugned orders are set aside. It is hereby declared that the petitioner is entitled for continuity of service right from the date of her suspension i.e. 18-9-1992 till the date of reinstatement i.e. 25-5-1994 (inclusive of privilege leave granted) and the entire period shall be treated as if the petitioner was on duty. However, the petitioner is not entitled for back wages for the said period. The petitioner, of course, is entitled for notional increments and other attendant benefits and continuity of service for the purpose of seniority, promotion and other service benefits, as if she was not suspended from service.

The Writ Petition is allowed to the extent indicated above. No costs.

10-03-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, Tenth day of March Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

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